



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNSD FFT

Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied for a monetary claim of \$6,616.7 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of double their security deposit, plus the recovery of the cost of the filing fee.

The tenant and the landlords appeared at the teleconference hearing, which began on April 9, 2020. The parties were affirmed and after 21 minutes, the hearing adjourned by consent of the parties due to the COVID-19 pandemic. On July 3, 2020, the hearing reconvened and the parties were provided the opportunity to present their evidence and testimony. A summary of the evidence and testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised concerns regarding the service of documentary evidence or their ability to review that evidence at the reconvened hearing. As a result, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them. If a monetary order is granted to a party, it will be emailed to that party for service on the other party.

Issues to be Decided

- Is the tenant entitled to monetary compensation under the Act, and if yes, in what amount?
- What should happen to the tenant's security deposit under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy agreement was scheduled to start on January 1, 2019 and required vacant possession by June 30, 2019. Monthly rent of \$2,700.00 was due on the first day of each month. The tenant paid a security deposit of \$1,350.00.

The tenant's monetary claim of \$6,616.27 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Return of security deposit of \$1,350.00 + portion withheld by landlords of \$84.91	\$1,434.91
2. Mattress	\$1,431.36
3. Cleaning	\$350.00
4. Loss of use of balcony	\$600.00
5. 1 Month Rent for 2 Month Notice	\$2,700.00
6. Filing fee	\$100.00
TOTAL	\$6,616.27

Firstly, it should be noted that the landlords did not agree with any portion of the tenant's monetary claim.

Regarding item 1, the tenant has claimed \$1,434.91 for the return of their \$1,350.00 security deposit, plus the \$84.91 that the tenant stated the landlords failed to return and withheld without permission. The tenant clarified during the hearing that the tenant was not waiving any rights under the Act to the security deposit doubling under the Act, which I will address further below.

The parties confirmed that the tenant provided their written forwarding address on June 30, 2019, on the outgoing Condition Inspection Report (CIR). The landlords returned all but \$84.91 to the tenant on July 14, 2019, by sending the tenant an e-transfer in the amount of \$1,265.09, which the tenant confirmed depositing. The landlords testified that

they withheld \$84.91 for utilities owing and testified that they did not have the written permission of the tenant to retain any amount from the security deposit. The landlords also confirmed that they did not submit a claim against the tenant's security deposit for unpaid utilities under the Act.

Regarding, item 2, the tenant has claimed \$1,431.36 for the cost of a mattress, which was dismissed without leave to reapply during the hearing as the tenant confirmed they had no before photos or receipts to provide the condition or the value of the mattress. The four-part test for damages or loss will be described later in this decision and will address my dismissal of this item in greater detail.

Regarding item 3, the tenant has claimed \$350.00 for the cost to clean the rental unit at the start of the tenancy, which the tenant stated began early on December 18, 2018, even though the tenancy agreement states January 1, 2019. This item was also dismissed without leave to reapply as the tenant failed to comply with section 7(2) of the Act and parts one to four of the test for damages or loss under the Act, which will be address later below.

Regarding item 4, the tenant has claimed \$600.00 for loss of use of the balcony of the rental unit for the entire term of the tenancy. The tenant was advised that by waiting until after the tenancy ended to claim for compensation starting in January 2019, that the tenant has failed to comply with section 7(2) of the Act, and part four of the test for damages or loss, which I will expand upon below. As a result, this item was dismissed without leave to reapply during the hearing.

Regarding item 5, the tenant has claimed \$2,700.00 for the one-month compensation required when the landlords issued the tenant a 2 Month Notice to End Tenancy for Landlord's use of Property dated December 16, 2018 (2 Month Notice). The 2 Month Notice had an effective vacancy date of June 30, 2019. The parties agreed that the tenant paid \$2,700.00 in rent for June 2019 before vacating the rental unit on June 30, 2019. The landlords stated that they did not pay the tenant compensation of \$2,700.00 as they were advised by an Information Officer from the Residential Tenancy Branch (RTB) that they had to issue a 2 Month Notice under the Act to end the tenancy. There is no dispute that the tenant did not file an application to dispute the 2 Month Notice. The tenant stated that they vacated the rental unit based on the 2 Month Notice. The tenancy agreement also lists section 13.1 of the Residential Tenancy Regulation and states that the owner/landlord will be moving into the rental unit. The tenancy end date of the tenancy agreement and the 2 Month Notice are June 30, 2019.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the landlords. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Item 1 - The tenant has claimed \$1,434.91 for the return of their \$1,350.00 security deposit, plus the \$84.91 that the tenant stated the landlords failed to return and withheld without permission. As the tenant confirmed during the hearing that the tenant was not waiving any rights under the Act to the security deposit doubling under the Act, section 38 of the Act applies and states in part:

Return of security deposit and pet damage deposit

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b)the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2)Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3)A landlord may retain from a security deposit or a pet damage deposit an amount that

(a)the director has previously ordered the tenant to pay to the landlord, and

(b)at the end of the tenancy remains unpaid.

(4)A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a)at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b)after the end of the tenancy, the director orders that the landlord may retain the amount.

(5)The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24

(2) *[landlord failure to meet start of tenancy condition report requirements]* or 36

(2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a)may not make a claim against the security deposit or any pet damage deposit, and

(b)must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

[Emphasis added]

Based on the above and considering that the parties confirmed the tenant provided their written forwarding address on June 30, 2019, on the outgoing CIR and that the tenancy

ended on the same date, I find the landlords had to return the entire security deposit of \$1,350.00, which accrued \$0.00 in interest, or file an application claiming against the security deposit no later than July 15, 2019 . The landlords only returned \$1,265.09, which is all but \$84.91 to the tenant on July 14, 2019, by sending the tenant an e-transfer, which the tenant confirmed depositing.

I have considered the landlords testimony that they withheld \$84.91 for utilities owing and that they did not have written permission of the tenant to retain any amount from the security deposit. In addition, as the landlords also confirmed that they did not submit a claim against the tenant's security deposit for unpaid utilities under the Act, I find that the landlords breached section 38(1) of the Act by failing to return the full security deposit amount of \$1,350.00 to the tenant by July 15, 2019. Therefore, I find the tenant is entitled to double the \$1,350.00 security deposit which totals **\$2,700.00**. From that amount, I deduct the \$1,265.09 amount returned by the landlords, for a balance owing by the landlords to the tenant in the amount of **\$1,434.91**.

Item 2 – Although the tenant claimed \$1,431.36 for the cost of a mattress, I find the tenant failed to meet all four parts of the test for damages or loss described above. I find the tenant failed to provide a before photo to support that the condition of the mattress was any different than at the end of the tenancy. Furthermore, without any receipt to support that the tenant lost \$1,431.36 by purchasing a new mattress in that amount, I find the tenant has provided insufficient evidence to support this portion of their claim. Consequently, this portion of the tenant's claim is dismissed without leave to reapply, due to insufficient evidence.

Item 3 - Although the tenant claimed \$350.00 for the cost to clean the rental unit, I find that section 7(2) of the Act applies, which states:

Liability for not complying with this Act or a tenancy agreement

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Emphasis added]

I find that it is only reasonable that if the tenant found that the rental unit was not reasonably clean at the start of the tenancy, that the tenant would write to the landlords to provide the landlords the ability to either, A) determine if the rental unit was reasonably clean as required by the Act and, B) clean the rental unit to a reasonably

clean condition, if needed. By claiming against the landlords once the tenancy has ended, I find gives the landlords no ability to do either A or B as noted above, and that the tenant failed to comply with section 7(2) of the Act as a result. Furthermore, section 7(2) of the Act is very similar to part four of the test for damages or loss and therefore, I find the tenant has failed to meet part four of the test of damages or loss also. Therefore, I dismiss this portion of the tenant's claim due to insufficient evidence, without leave to reapply.

Item 4 – Although the tenant has claimed \$600.00 for loss of use of the balcony of the rental unit for the entire term of the tenancy, I find the tenant failed to comply with section 7(2) of the Act by waiting until after the tenancy ended to claim for compensation dating back to January 2019. Therefore, I also find the tenant has not met part four of the test for damages or loss. Consequently, this item is dismissed without leave to reapply due to insufficient evidence.

Item 5 - The tenant has claimed \$2,700.00 for the one-month compensation required when the landlords issued the tenant a 2 Month Notice. I have reviewed the 2 Month Notice served on the tenant by the landlords, which had an effective vacancy date of June 30, 2019. While the landlords had the tenant signed the tenancy agreement citing section 13.1 of the Regulation as the authority to end the fixed-term tenancy, the landlords also served a 2 Month Notice on the tenant, which the tenant did not dispute.

Although the landlords stated that they were advised when they called an Information Officer at the RTB that they should also serve a 2 Month Notice, I advised the landlords that I was not part of that conversation and that a 2 Month Notice is not required when a fixed-term tenancy exists as long as the parties have initialed and have agreed that the tenancy ends on a specific date, and that 13.1 of the Regulation applies. Therefore, as the landlords served the tenant with the 2 Month Notice, I find that the landlords are liable for the compensation required under section 51 of the Act, which applies and states:

Tenant's compensation: section 49 notice

51(1)A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[Emphasis added]

Based on the above, I find the tenant has met the burden of proof and that the landlords breached section 51(1) of the Act by failing to compensate the tenant with \$2,700.00, which is the equivalent of one month's rent. Therefore, I grant the tenant **\$2,700.00** in accordance with section 51(1) of the Act as the tenant received a 2 Month Notice under section 49 of the Act from the landlords and did not dispute the 2 Month Notice. As stated in the hearing, while the tenancy ended based on both the fixed-term tenancy and the 2 Month Notice, I grant the tenant compensation as noted above as the Act requires that such compensation is given to the tenant when a 2 Month Notice is received from the landlords.

As the tenant's application had some merit, I grant the tenant the recovery of their filing fee in the amount of **\$100.00** pursuant to section 72 of the Act.

Monetary Order – I find that the tenant has established a total monetary claim in the amount of **\$4,234.91**, comprised of \$1,434.91 for item 1, \$2,700.00 for item 5, and \$100.00 for the filing fee. Pursuant to section 67 of the Act, I grant the tenant a monetary order in the amount of **\$4,234.91**.

I caution the landlords not to breach sections 38(1) and 51(1) of the Act in the future.

Conclusion

A portion of the tenant's application is successful.

The tenant has established a total monetary claim of \$4,234.91 as described above. The tenant has been granted a monetary order under section 67 of the Act in the amount of \$4,234.91.

Should the tenant require enforcement of the monetary order the order must be served on the landlords and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The landlords are cautioned that costs of such enforcement may be recoverable from the landlords.

This decision will be emailed to both parties.

The monetary order will be emailed to the tenant only for service on the landlords.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 16, 2020

Residential Tenancy Branch